REMARKS

Claims 52-72 are rejected under 35 UC 103(a) as being unpatentable over Koefelda in view of Roberts (US Patent No. 2,743,836) and Graser (US Patent No. 4,378,878). The Examiner states that it would be obvious to modify the crate of Koefelda to include a carrier and a label for product recognition or advertising. Applicant respectfully disagrees.

The claimed invention is not obvious. Koefelda is not designed to employ a carrier as disclosed in Roberts. As shown in Figure 14 of Koefelda, a corner area of a case 20 includes a curved corner panel 65 that is sized to receive and secure an individual bottle B (column 7, lines 48 to 59). A side lower panel portion 74 of sidewalls 25 and endwalls 27 also include a curved panel. Due to the structure of the curved panels, it would not be practical to employ a carrier in the crate 20. That is, the case 20 is designed to receive individual bottles B and not designed to receive a carrier that holds bottles.

The carrier 12 of Graser also could not be used in the crate 20 of Koefelda. As stated above, the corner area of the crate 20 of Koefelda includes a curved corner panel 65 and sidewalls 25 and endwalls 27 that include a curved panel. If the carrier 12 of Graser was employed in the crate 20 of Koefelda, the depending legs 22 and 24 of the carrier 12 would interfere with the fit of the bottles B along the curved panels of the crate 20, preventing the bottles B from being retained in place. Again, the crate 20 of Koefelda is not designed to receive a carrier.

Additionally, there is no motivation to employ the carrier 15 of Roberts with the crate 20 of Koefelda. Koefelda discloses a nestable crate 20 that stores and transports bottles B. Roberts discloses a carrier 15 that holds milk bottles 16 that is received in a container box 10. The container box 10 is generally placed outdoors near a customer's home to prevent animals from contacting the bottles and to keep the bottles out of the sun to keep the milk cool (column 1, lines 19 to 30). The container box 10 is not moved in its location, and the carrier 15 is moved into and out of the container box 10. That is, the container box 10 is kept stationary. There is no motivation to employ the carrier 15 of Roberts with the crate 20 of Koefelda as the problems solved by Roberts provide no benefit to the crate 20 of Koefelda.

Finally, the references taken together do not disclose, suggest or teach the claimed invention. In Graser, the carrier 12 includes depending legs 22 and 24 having advertising material 12. If the advertising material 12 used in Graser was employed with a carrier in Koefelda, the advertising material 12 would be located above the sidewalls 25 of the crate 20 and would not be revealed in windows 63 of the crate 20 as claimed. The references do not teach, suggest or disclose the claimed invention, and the claimed invention is not obvious.

Claim 62 is rejected under 35 USC 103(a) as being unpatentable over Koefelda in view of Roberts, Graser and Apps et al. (US Patent No. 5,651,461). Claim 62 depends on patentable independent claim 51 and is allowable for the reasons set forth above. The claimed invention is not obvious as there is no motivation to employ a carrier with a label that is revealed by a display opening in the case 20 of Koefelda. The claimed invention is not obvious, and Applicant respectfully requests that the rejection be withdrawn.

Claims 73 is rejected under 35 USC 103(a) as being unpatentable over Koefelda in view of Roberts, Graser and Champlin et al. (US Patent No. 4,588,077). The Examiner states that Champlin et al. teaches a carrier with six compartments that each receive a bottom portion of a bottle. It would not be obvious to employ a carrier that holds 6 bottles in Koefelda. Koefelda discloses that the bottles are 1 liter bottles (column 10, lines 3 to 8). If Koefelda employed a carrier that held 6 bottles, each carrier would have to hold 6 liters of liquid, which would be heavy and difficult for a consumer to handle. There is motivation to employ a carrier that holds 6 bottles B in Koefelda. Claim 73 is not obvious, and Applicant respectfully requests that the rejection be withdrawn.

Claims 52-73 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of Apps (US Patent No. 5,979,654) in view of Roberts, Garser and Chaplin et al. A terminal disclaimer for the '654 patent is included.

Claims 52-73 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims and drawings of Apps (US Patent No. D400,012). A "two-way" test is to be applied between a design patent and the claims under appeal. Under the "two-way" test, "the obviousness-type double patenting rejection is appropriate only if the claims of the two patents cross-read, meaning that 'the test is

RECEIVED
CENTRAL FAX CENTER

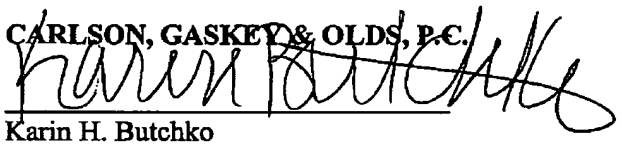
NOV 17 2006

whether the subject matter of the claims of the patent sought to be invalidated would have been obvious from the subject matter of the claims of the other patent, and vie versa'." *Carman*, 220 USPQ at 487. The Examiner has not applied the "two-way" test to the claims, and therefore the rejection is improper.

Thus, claims 52-73 and 95-96 are in condition for allowance. The Commissioner is authorized to charge Deposit Account No. 50-1482, in the name of Carlson, Gaskey & Olds, P.C., $130.00 for the Terminal Disclaimer Fee. No additional fees are seen to be required. If any additional fees are due, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds, P.C. for any additional fees or credit the account for any overpayment. Therefore, favorable reconsideration and allowance of this application is respectfully requested.

Respectfully Submitted,

CARLSON, GASKEY & OLDS, P.C.

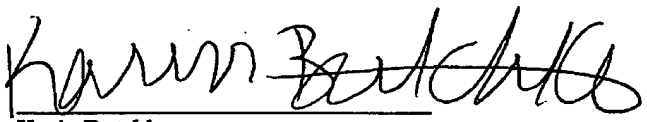


Karin H. Butchko
Registration No. 45,864
400 West Maple Road, Suite 350
Birmingham, Michigan 48009
Telephone: (248) 988-8360
Facsimile: (248) 988-8363

Dated: November 17, 2006

CERTIFICATE OF FACSIMILE

I hereby certify that the enclosed Response, Terminal Disclaimer and Power of Attorney are being facsimile transmitted to the United States Patent and Trademark Office, 571-273-8300, on November 17, 2006.



Karin Butchko